



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 268

Hearing Date: February 1, 2005

Committee On: Urban Affairs

Introducer(s): (Urban Affairs Committee)

Title: Change Volunteer Emergency Responders Recruitment and Retention Act provisions

Roll Call Vote – Final Committee Action:

- X Advanced to General File
 - Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

7	Yes	Friend, Combs, Connealy, Cornett, Janssen, Landis and Schimek
	No	
	Present, not voting	
	Absent	

Proponents:

Urban Affairs, Bill Stadtwald, Introducer
Jerry Stilmock
Paul Pedersen
Lynn Rex

Representing:

NE State Volunteer Firefighters Asso.
North Platte Fire Dept.
League of NE Municipalities

Opponents:

None

Representing:

Neutral:

None

Representing:

Summary of purpose and/or changes: This bill involves the Volunteer Emergency Responders Recruitment and Retention Act (VERRRA), proposing to change the nature of the “trust” fund holding the assets for the service award program to insure that benefits accruing to individual participants are not taxable in the year in which they become “nonforfeitable”. The bill is applicable to all cities, villages, and rural and suburban fire protection districts with volunteer emergency response personnel conducting service award benefit programs pursuant to VERRRA.

The VERRRA (LB 849 adopted in 1999) established the authority for first and second class cities, villages, and fire protection districts to establish service award benefit programs to encourage the recruitment and retention of volunteer firefighters and rescue squad personnel through the adoption of the Volunteer Emergency Responders Recruitment and Retention Incentive Act.

This bill established a new state board, the Volunteer Service Award Benefit Review Board made up of active volunteer firefighters and rescue squad personnel and representatives from first and second class cities and villages and rural and suburban fire protection districts. That board was to define the minimum qualifications necessary for an individual to qualify as an active firefighter, active rescue squad member, or as an active emergency responder (one who is engaged in both firefighting and rescue squad duties). To properly recognize the distinctions among different departments across the state in terms of the area and populations served, the board would be authorized to classify departments on stated criteria and establish different criteria for members to qualify as “active” on that basis.

Once these minimum qualifications had been established, individual cities, villages, fire protection districts, or combinations of them could establish service award benefit programs which would qualify persons who met the criteria to receive service benefit awards based on at least ten years of continuous active service. The awards would be calculated on annual contributions to individual accounts made by the sponsoring municipality or fire protection district and on supplemental state contributions. At such time as the qualifying individual reached the age of sixty-five, he or she would receive the entire amount in his or her account as a lump sum or as an annuity.

The Volunteer Service Award Benefit Review Board would review each individual program, both before the program began and on an annual basis, to insure that it properly calculated the qualifications of individuals to determine if they met the “active” criteria and that funds were properly allocated to individual accounts and invested.

The legislation also contemplated that, beginning in fiscal year 2001-02, the state would supplement individual accounts by an appropriation to be divided equally among all active members of qualifying service benefit award programs in the immediately prior year. The supplemental appropriation would continue in each succeeding year. The amount appropriated would be between \$100 and \$250 per active member.

This legislation was not mandatory: it would merely authorize the cities, villages and fire protection districts, if they chose to do so, to implement a service benefit award program. The amount of money to be appropriated for the program was left exclusively within the discretion of the sponsoring body and could be increased, decreased, or ended at any time subject only to the rights of those members who had already qualified for service benefit awards. Any program adopted under the act would be exclusively for volunteer members active on or after the date of the adoption of the program by the governing board of the municipality or fire protection district. No program could be adopted to reward former volunteers who were no longer active: there is no retroactive application of the authority.

Having made the determination (by the 2000 interim) that significant state funding would not be available for the foreseeable future, the decision was made to introduce LB 808 in 2001 to remove the state from the statutory scheme, both the on the funding and on the administrative side.

The VERRRA was amended as provided in LB 808, to remove the state (PERB) from assuming the responsibility for the investment and management of these funds, (which would have been a significant cost). With the passage of LB 808, the program became a purely local one with no state funding or administrative responsibility.

The basic concept of the VERRRA was made possible by federal legislation (adopted in 1993) that authorized the creation of service benefit award programs and provided that benefits accrued by the volunteer for each year of service would not be counted as taxable income if the program was properly created.

Thus, the volunteer would not be required to report or pay taxes on the benefits accrued under the program, even if they were nonforfeitable or “vested” until the volunteer has retired and began spending the earned benefits.

Concerns have been raised about the current provisions of the Act in the light of prior IRS rulings on programs in other states. Because Sec. 35-1324 creates a “funded arrangement” where the assets are held in a virtually “inviolable” trust for the benefit of the volunteer that has qualified for the ultimate payment of the benefits, there is a real possibility that the benefits would be taxable to the volunteer in the year in which they were earned.

To avoid this circumstance, the amendment proposed in section (3) would provide that the assets would be placed in a “grantor “ trust within the meaning of the relevant provisions of the IRS Code (page 5, lines 11 to 14 of the bill). This would be structured to provide some security for the sponsoring political subdivision without penalizing the individual participating volunteer by creating a current tax liability. This is accomplished by making the funds set aside for the program subject to general creditors of the city, village, or fire protection district in the event of the insolvency or bankruptcy of those subdivisions (page 5, line 27 to page 6, line 10). The assets set aside for the volunteer would not be subject to attachment for debts of the volunteer (until final distribution).

Additionally, a new subdivision to Sec. 35-1324 is added authorizing the subdivision sponsoring the program to include in the trust and provisions deemed necessary to insure that the benefit accrued are not taxable to the beneficiary until distribution (thus avoiding the need for additional legislative action to cure defects which may be discovered in the future or to address new issues raised by federal authorities).

While this is the core issue in the bill, three other matters are dealt with in the bill.

First, Sec. 35-1310 is amended (in section 1 of the bill) to make it clear that the certification administrator of any program must make annual status reports to the governing body of the political subdivision sponsoring the program (and not just one report in the first year).

Second, Sec. 35-1312 is amended (in section 2) to authorize “graded vesting” in a local program. Under the current provisions of the bill, nothing is “vested” to the volunteer participant until a full ten years is served. This would authorize a plan to include provisions permitting proportional vesting: 50% after 5 years, 60% after six years, etc.

Third, Sec. 35-1330 is amended (in section 4) to authorize (at the discretion of the sponsor) that forfeited accounts (funds set aside for volunteers who do not “vest” by serving sufficient time) be used to reduce the amount of current or future obligations of the sponsor to the total awards benefit program (instead of just for the cost of conducting the program).

Explanation of amendments, if any: N/A

Senator Mike Friend, Chairperson